IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.W.P. No. 13031 of 2003

Date of Decision: August 7, 2006

Ajay Kumar

…..Petitioner

Vs.

Union of India and others

…..Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR.

HON'BLE MR. JUSTICE M.M.S. BEDI.

Present:- Mr. S.P. Chahar, Advocate
for the petitioner.

Mr. Gurpreet Singh, Advocate
C.G.S.C. for the respondents.

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M.M. KUMAR, J.

The petitioner is a candidate for the post of Constable (General) in the Central Reserve Police Force. In response to an advertisement of 50 posts, he had applied and was subjected to physical test on July 11, 2001. On medical examination, he was declared unfit on July 22, 2001. He filed an appeal for his medical re-examination. He was again declared unfit on November 1, 2001 when his medical re-examination was

undertaken at 28th Bn. CRPF, Hallo Majra, Chandigarh. The respondents eventually requested the prestigious institution P.G.I.M.E.R., Chandigarh, to conduct review medical examination of the petitioner. On April 24, 2002, the petitioner is claimed to have been declared fit to join service. He was called for interview on June 19, 2002 at Group Centre, CRPF, Gurgaon, Haryana. He was issued appointment letter on July 10, 2002, and he was to join his service on July 29, 2002. On March 24, 2003, the services of the petitioner were terminated as he was declared medically unfit on that date (P-6). Aggrieved by the aforementioned order, the petitioner has approached this Court by invoking a writ under Article 226 of the Constitution.

After the filing of the written statement by the respondents, this Court vide order dated August 9, 2005 has observed that since the petitioner has been found to have a squint in his right eye and has been subsequently discharged from service being medically unfit. This Court has noticed in para 2 of the Preliminary Objections of the written statement, which reads as under:-

> "That no cause of action has accrued to the petitioner much less to invoke the extra ordinary writ jurisdiction of this Hon'ble Court. The petitioner applied for the post of CT/GD in response to advertisement issued by NWZ Hqs vide their letter No.R.II-26/2000-ADM-I dated 3.5.2001. After scrutiny/checking of application of the petitioner, he was issued call letter bearing Roll No.274/SC to appear

before the P.O., Recruitment Board at 37 Bn Sector 43, Chandigarh on 11.7.2001. After physical measurement and physical efficiency test, written test was conducted by the Recruitment Board. On declaring the petitioner pass in the written test, his medical examination was done on 22.7.2001 by the Medical Officer, Recruitment Board and the petitioner was declared unfit due to squint in his right eye. Further, on appeal, re-medical examination of the petitioner was done by Dr.Prem Kumar, CMO, GC, Gurgaon at 28 BN Hallomajra, Chandigarh in accordance with C/C-8/84, but the petitioner was again declared unfit due to mild squint. On the direction of DIG, Chandigarh which was not required as per order on the subject, review medical examination of the petitioner was again conducted by PGI by a Board of Specialists of Ophthalmology and the Board opined that the petitioner has no manifest squint but has moderate exophoria with slow recovery and he is fit for the job of CT/GD. On the basis of above medical report of PGI, without clarifications from the Medical (Directorate), interview of the petitioner was done at GC-CRPF, Gurgaon on 19.6.2002. DIG, CRPF, Chandigarh vide his letter No.R.II-3/2001-EC-2 dated 1.7.2002 directed this GC to issue offer of appointment to the petitioner after observing due formalities. In pursuance of DIG, CRPF, Chandigarh letter dated 1.7.2002, offer of

appointment was issued to the petitioner by this GC on 10.7.2002 with directions to report to this GC by 29.7.2002. Accordingly, on his arrival, the petitioner was sent to CMO-I/C, GC-PJR for filling up of medical examination form who, in turn, vide his letter dated 31.7.2002 asked that as per C/C-3/84 any degree of squint is to be rejected during recruitment but in this case please intimate whether the opinion of the Board of PGI is acceptable or not as the petitioner is suffering from "Moderate Exophoria" with slow recovery, which is also a type of squint. Therefore, the case was referred to DIG, GREF, Chandigarh vide letter No.R.II-1/2002-SC-V dated 2.8.2002 and DIG, CRPF, Chandigarh further referred the case to Spl.DG, NWZ Chandigarh for clarification. The Spl. DG vide his letter No.R.II-25/2001-Adm-I dated 16.8.2002 clarified that the opinion of Special Medical Board is to be treated as final as there is no dispute on that. On the basis of the clarification, CMO-I/C submitted report declaring the petitioner fit on 4.9.2002 giving remarks that "candidate is having exophoria with slow recovery. A review board of PGI, Specialist opined that he is fit for CRPF Service. The same is endorsed by office of Spl.DG, NWZ CRPF vide their letter No.R.II-25/20001-Adm-I dated 16.8.2002 to query No.R-II-3/2001-EC-2 dated 8.8.2002 of DIGP, CRPF, Chandigarh." On this his case

> was again referred to DIG, Chandigarh on 16.9.2002 vide letter No.R.II-1/2002-V to seek clarification from CRPF Directorate General, DIG, CRPF, Chandigarh referred the case to Addl.DG, NWZ, Chandigarh, vide letter No.R.II-3/02-EC-2 dated 30.9.2002. Further, ADG, NWZ Hqs vide their endorsement No.R.II-25/01-Adm-I dated 13.3.2003 intimated that Director (Medical) has declared the petitioner medically unfit due to squint in eye. Accordingly, petitioner was informed about his medical unfitness vide letter No.R.II-1/2003-EC-V dated 24.3.2003."

After noticing the aforementioned para, this Court had directed that the petitioner be re-examined at the P.G.I. so as to found out as to whether the petitioner was still fit for appointment and as to whether there was squint in his eye or as to whether he was suffering from Exophoria, rendering him unfit for service in CRPF. Accordingly, the petitioner was forwarded to the PGI, Chandigarh.

In pursuance to the direction issued by this Court, the PGI has submitted its report dated September 22, 2005, which ahs been taken under account and the same reads as under:-

> "In pursuance of the Medical Superintendent's Endst. No.EV(9)05/PGI/MA/910-15 dated 6.9.2005, the meeting of the Medical Board, as constituted was held today the 22nd September, 2005 in Room No. 4003 of the

Eye Department, PGI, Chandigarh and examined Mr. Ajay Kumar, S/o Shri Ramkishan, Village Polian Bet, Tehsil Haroli, Distt. Una (HP) (CR No. 650942-SC No. 11079). He had unaided visual acuity of 6/6 in both eyes and his colour vision and funds examination was found to be within normal limits. He has no manifest squint. However, he has exophoria for near with slow recovery. Worth four dot test showed binocular single vision. In our opinion, the candidate is fit for the job of Constable in CRPF.

Sd/-R.K.Sharma	Sd/-G.S.Brar.
Dy.Medical Supdt.(II)	Assistant Professor
Nehru Hospital,	Deptt.of Ophthalmology
PGIMER, Chandigarh	PGIMER, Chandigarh
(Member)	(Member)

Sd/-Arun Jain
Associate Professor,
Deptt. of Ophthalmology
PGIMER, Chandigarh
(Chairman)"

Having heard the learned counsel, we are of the considered view that the petitioner has failed to answer the description of medical fitness as required by the respondents. It has been categorically opined by the PGI authorities that the petitioner has Exophoria for near with slow

recovery, which in common man's language means 'ocular misalignment where the visual axes diverge inappropriately. For example, medical rectus muscle weakness may produce this condition as the affected eye will deviate laterally upon attempted forward gaze. An exotropia occurs due to the relatively unopposed force exerted on the eye by the lateral rectus muscle, which pulls the eye in an outward direction.' This condition is also known as under convergence. In other words, it is a tenancy of the eyes to deviate outwards when fusion is suspended. Therefore, we are unable to accept that the petitioner is medically fit to enter service and the order of discharge dated March 24, 2003 (P-6) discharging him from service deserves to be upheld.

The argument of the learned counsel that the petitioner has been found fit to join service by the PGI, as is observed in the last line of the report, does not deserve to be accepted because the PGI authorities have given a categoric finding given in the last three lines that the petitioner has Exophoria for near with slow recovery. The aforementioned observation made by the Medical Board of the PGI puts an end to the claim made by the petitioner.

For the reasons aforementioned, this petition fails and the same is dismissed.

(M.M.KUMAR)
JUDGE

August 7, 2006
sanjay

(M.M.S.BEDI)
JUDGE

FIT FOR INDEXING